

Message Text

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PAGE 01 STATE 072970

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----- 107312

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FM SECSTATE WASHDC

TO AMEMBASSY BEIRUT PRIORITY

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E. O. 11652: N/ A

TAGS: EFIN, LE

JOINT STATE/ OPIC

SUBJECT: INVESTMENT GUARANTY AGREEMENT

REF: BEIRUT 1469

1. EMBASSY, AT ITS DISCRETION, MAY CONVEY FOLLOWING TO
FOREIGN MINISTER:

A. USG BELIEVES ENACTMENT OF PROPOSED LEGISLATION
BY ITSELF COULD HAVE VERY POSITIVE EFFECT ON FLOW OF
U. S. AND OTHER FOREIGN INVESTMENT INTO LEBANON.

B. WE HAVE THE MATTER OF OPIC BILATERALS UNDER
REVIEW. THE ALTERNATIVE PROPOSED BY LEBANON WILL BE
INCLUDED IN THAT REVIEW, AS DETAILS BECOME KNOWN.

C. WHILE PROPOSED LEGISLATION MAY INCORPORATE MANY
OR ALL PRINCIPAL FEATURES OF STANDARD BILATERAL
AGREEMENT, WE ARE NOT NOW IN A POSITION TO DETERMINE
WHETHER LAW BY ITSELF WOULD BE SUFFICIENT FOR INSTITUTION
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PAGE 02 STATE 072970

OF OPIC PROGRAMS. SHOULD PRESENT REVIEW REACH JUDGMENT THAT A LAW CAN BE ACCEPTABLE ALTERNATIVE TO BILATERAL AGREEMENT, THEN WE WOULD DETERMINE WHETHER LEBANESE LAW, AND ADMINISTRATIVE PROCEDURES IT SETS UP, WOULD MEET APPROPRIATE STANDARD.

2. ASSUMING DRAFT LEGISLATION WERE TO GIVE OPIC ESSENTIALLY SAME RIGHTS AS WOULD BILATERAL AGREEMENT, THERE WOULD BE NOTHING IN INTERNATIONAL LAW TO RESTRAIN A FUTURE LEBANESE REGIME FROM REPEALING THAT LAW OR SUBSTANTIALLY ALTERING IT TO THE DISADVANTAGE OF OPIC AND ITS INSURED INVESTORS. UNILATERAL ABROGATION OF A BILATERAL AGREEMENT WOULD, ON THE OTHER HAND, PROVIDE THE USG WITH GROUNDS FOR REPRESENTATION.

3. THIS IS NOT TO SAY, ABSENT A BILATERAL AGREEMENT, USG WOULD BE WITHOUT RECOURSE UNDER INTERNATIONAL LAW IN THE EVENT OF AN INVESTMENT DISPUTE. FOR EXAMPLE, PAYMENT OF PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION IN CASES OF EXPROPRIATION IS A PRINCIPLE WELL RECOGNIZED IN INTERNATIONAL LAW, AND ONE TO WHICH PARENT GOVERNMENTS AND INVESTORS FREQUENTLY REFER. ONE PURPOSE OF BILATERAL, HOWEVER, IS TO ESTABLISH MUTUALLY AGREED MODE OF SETTLEMENT IN ADVANCE OF POSSIBLE INVESTMENT DISPUTES. FOR THESE REASONS, USG PREFERS BILATERAL AGREEMENTS, OF WHICH MORE THAN 90 HAVE BEEN SIGNED.

4. LEGISLATION SHOULD

A. DESCRIBE INVESTMENT INCENTIVES BROADLY-- POLITICAL RISK COVERAGE, FINANCIAL GUARANTIES, DIRECT LENDING (EMBASSY SHOULD NOTE THAT LATTER TWO ALSO COVER COMMERCIAL RISKS-- SEE PARA 3. B.2 OF REF);

B. DESCRIBE PROGRAM OPERATORS BROADLY-- GOVERNMENTS AND THEIR INSTRUMENTALITIES, MIXED PUBLIC- PRIVATE, MULTILATERAL;

C. CONFIRM SUBROGATION RIGHTS, STANDING IN LEBANESE COURTS, RIGHTS RE SUCCESSION TO AND DISPOSITION OF ASSETS AND CURRENCY;

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PAGE 03 STATE 072970

D. AUTHORIZE SOME GOL AGENCY TO ENTER INTO

APPROPRIATE IMPLEMENTING ARRANGEMENTS RE PROJECTS
APPROVED UNDER THE LAW; AND

E. PERMIT SUBMISSION OF DISPUTES (WITH INVESTORS
OR FOREIGN AGENCIES) TO ARBITRATION.

AT ITS DISCRETION, EMBASSY MAY INFORM GOL THAT OPIC
WOULD BE PLEASED TO PROVIDE TECHNICAL COMME
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